

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1438 of 1999

in

SPECIAL CIVIL APPLICATION No 1399 of 1987

with

CIVIL APPLICATION NO. 14272 OF 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE J.M.PANCHAL

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

RA PARMAR

Versus

DIRECTOR GENERAL OF POLICE

Appearance:

MS MAMTA R VYAS for Appellant
MR SP HASURKAR for Respondent No. 1
NOTICE SERVED for Respondent No. 2, 3

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

and
MR.JUSTICE J.M.PANCHAL

Date of decision: 03/07/2000

C.A.V. JUDGMENT (Per D.M. Dharmadhikari, C.J.)

#. By this Letters Patent Appeal, order dated 28-8-1999 passed by the learned Single Judge in Special Civil Application No. 1399 of 1987 has been assailed by the appellant, as his claim for payment of difference of salary to him on the basis of his retrospective promotion to the post of Mounted Police Sub Inspector and thereafter Mounted Police Inspector has been denied.

#. The service details of the appellant on which his claim for arrears of difference of salary is based are as under:-

#. The appellant was recruited in the year 1950 to the post of Mounted Police Constable and was promoted as Mounted Head Constable in the year 1968. He was further promoted to First Grade Head Constable. One other Head Constable, namely, Shri Shekhavat, who was junior to the appellant, was promoted as Mounted Police Sub Inspector with effect from 3-1-1997. The appellant made a representation to the Department against his supersession. By communication dated 30-9-1985 (Annexure A to the petition), the Director General of Police allowed his representation and granted him promotion to the post of Mounted Police Sub Inspector with deemed date 3-1-1971.

#. Pursuant to the above order of the Director General of Police, the District Superintendent of Police, Banaskantha, issued an order on 1-11-1985 (Annexure B to the petition) fixing the pay of the appellant in the month of January 1982 on the basis of his deemed promotion to the post of Mounted Police Sub Inspector with effect from 3-1-1971. When this order came to the notice of the Office of the Director General of Police, by communication dated 23-11-1995 (Annexure C to the petition), the District Superintendent of Police was directed not to work out the difference of salary between 3-1-1971 to 6-5-1981, as proposed, for payment to the appellant.

#. The Special Civil Application giving rise to this Letters Patent Appeal was filed in the year April 1987 by the present appellant-petitioner claiming difference of

salary payable to him between 3-1-1971 to 6-5-1981 on the basis of his retrospective promotion to the post of Mounted Police Sub Inspector.

#. During the pendency of the Special Civil Application, the appellant retired from service in July 1987. Before his Special Civil Application could be decided, by order issued as late as 12-8-1999, the appellant was promoted to the post of Mounted Police Inspector, with effect from 23-4-1983. But again he was not granted any monetary benefit of arrears of difference of salary between 23-4-1983, i.e., the deemed date of his promotion to the date of his actual retirement from service in April, 1987.

#. Learned Single Judge by the impugned order dated 12-8-1999 has negatived both his claims for arrears of salary on the basis of his retrospective promotions on the post of Mounted Police Sub Inspector between 3-1-1971 to 6-5-1981 and on the post of Mounted Police Inspector between 23-4-1983 to the date of his actual retirement in April, 1987.

#. The learned Single Judge upheld the stand of the Department that such claim for arrears of salary based on the retrospective promotion for the posts and periods aforesaid could not be granted on the basis of Rule 57A(i) of Bombay Civil Service rules, 1959 read with Circular dated 30-3-1970 issued thereunder by the State of Gujarat. Reliance by the learned Single Judge is placed on a decision of Supreme Court in the case of State of Maharashtra and anr. V. Vinayak AIR 1977 SC 505. The relevant part of Rule 57A and the Circular of the State of Gujarat dated 30-3-1970 issued thereunder read as follows:-

"Rule 57A(i) Notwithstanding the provisions contained in these rules the pay of Government Servant whose promotion or appointment to post is found to be or to have been erroneous on the basis of facts, e.g. incorrect seniority, failure to apply any relevant rules or orders correctly shall be regulated in accordance with any general or special orders issued by the Government in this behalf.

(ii) When any rule or order regulating pay is made with retrospective effect, the pay of a Government Servant affected by such order or rule, shall be fixed notionally as if the rule, order as were applicable in his case but the Government servant concerned shall not be called

upon to refund the resultant amount of over payment on account of pay and allowances."

(Underlining by us)

Clause (1) of Circular dated 30-3-1970 issued under above Rule reads:-

"(1) In the cases in which supersession of a Government servant for promotion to a higher post is considered by higher authorities to be unjustified and such authorities having powers to set aside the orders of supersession do so, such Government servant should be deemed to have been promoted but for his wrongful supersession, that is from the date from which his juniors were promoted. On restoration of his seniority, the period from such deemed supersession date till the date of this actual promotion should count for the purpose of pay fixation on the promotion post but no arrears of pay for that period on that account should be paid to him. He must also earn his increments on the promotion post only after full incremental period is over, except where B.C.S.Rs. provide otherwise or under the specific orders or rules governing pay fixation."

#. Learned counsel Smt. Mamta Vyas who appears for the appellant contends that it has not been denied by the State that Head Constable, Shri Shekhawat, who was junior to the appellant was promoted from 3-1-1971 and the appellant was thereafter on his representation found entitled to retrospective promotion on the post of Mounted Police Sub Inspector with effect from 3-1-1971. To support the supersession of the appellant on the post of Mounted Police Sub Inspector, on behalf of the Department, it is said that the appellant had not passed the qualifying examination for the post of Police Sub Inspector. It is, however, not been disputed that Shri Shekhawat was also not shown to have passed the departmental examination before grant of promotion to him with effect from 3-1-1971. In any case, the appellant's representation against his alleged supersession having been allowed with grant of retrospective promotion to him from 3-1-1971, there was no justification not to grant him arrears of difference of salary between the due date of his promotion, i.e., 3-1-1971 to the date of his actual promotion dated 6-5-1981.

##. The next submission made on behalf of the appellant is that the appellant who was due for promotion for the higher post of Mounted Police Inspector in the year 1983

was not granted promotion till he retired from service. It is only after such a long period of pending of his petition that on 12-8-1999 he has been retrospectively promoted to the post of Mounted Police Inspector with effect from 23-4-1983 and even then, no arrears of difference of pay or salary has been allowed to him from the date of his promotion on 23-4-1983 to the date of his actual retirement on 30-4-1987. Learned counsel submits that the Department had denied him promotion to the higher post of Mounted Police Inspector on the ground that there was a case pending in Baroda Civil Court. Therefore, he could not be promoted in due time. Mention of the above fact is to be found in paragraph 7 of the order of the learned Single Judge. The order of his promotion to the higher post made on 12-8-1999, with effect from 23-4-1983, was produced during the course of hearing before the learned Single Judge and its mention has been made in paragraph 8 of the order. The order produced before the Court showed that he was only to be notionally fixed in the promotion post of Mounted Police Inspector with effect from 23-4-1983, but is not to be paid any difference of salary on account of such promotion.

##. Learned counsel for the appellant argues that the Rule and Circular on which his claim was negatived have no application as the appellant was undoubtedly wrongly superseded for the post of Mounted Police Sub Inspector and deprived of promotion to the higher post of Mounted Police Inspector for no fault on his part.

##. Learned A.G.P. Shri Hasurkar made strenuous effort to support the action of the Department and the order of the learned Single Judge, by contending that even after grant of retrospective promotion to the appellant on the two higher posts mentioned above, he was rightly denied difference of salary on the principle of 'no work no pay', which is incorporated in the above quoted rule and circular of the Government.

##. After considering the submissions made by the learned counsel for the parties and the law brought to our notice, we are of the considered opinion that the appellant's claim was wrongly negatived by the learned Single Judge on the basis of the Rule and the Circular quoted above. The Rule and the Circular can have no application where the court finds that the Government Servant was wrongly superseded and denied due chance of promotion by the Departmental authorities for no fault on his part. The Circular is restricted in its application to the Departmental authorities and can place no

restriction on the powers of the Court. In the instant case, the appellant, who was due for promotion prior to his next junior Shri Shekhavat, with effect from 3-1-1971, was denied promotion on untenable plea that he had not passed the Departmental Examination. His representation against his alleged supersession having been found to be justified and promotion granted to him on the due date, i.e., 3-1-1971, he should also have been paid the difference of salary between the date of his deemed promotion to the date of his actual promotion. The order of promotion dated 30-9-1985 grants him actual promotion from 6-5-1981 being the alleged date of his passing the Departmental Examination and grants him retrospective date of seniority from 3-1-1971, i.e., the date on which Shri Shekhavat, an employee, next junior to him had been promoted. The appellant during the pendency of his case before the learned Single Judge was retrospectively promoted to the post of Mounted Police Inspector by the order dated 12-8-1999 with effect from 23-4-1983. The appellant was due for promotion to the higher post of Mounted Police Inspector in the year 1983, but was not promoted till his retirement in April 1987. He was granted notional promotion, after such a long delay when he had approached this Court, by order issued as late as on 12-8-1999. The Department has failed to substantiate its stand that the appellant could have been legitimately denied his chance of promotion to the higher post of Mounted Police Inspector, because of any case pending concerning him in the Baroda Civil Court. It is thus clear that for no fault on his part, the appellant was denied chance of promotion in due time both on the posts of Mounted Police Sub Inspector and Mounted Police Inspector. For such serious lapses committed by the Department Authorities, the appellant, who is not at all at fault, cannot be made to suffer taking shelter behind the above quoted Rule 57A and Circular dated 30-3-1970 issued thereunder.

##. The decision in the case of State of Maharashtra (supra) relied upon by the learned Single Judge is distinguishable on the contents of Circular therein which have been reproduced in the judgment of the Supreme Court. In that case the Circular came to be issued on the reorganisation of States after 1st of November, 1956. The provisional inter se seniority list of employees from integrating States was pending finalisation in accordance with the Allocated Government Servants (Absorption, Seniority, Pay and Allowances) Rules 1957. The provisional list was subjected to review in the light of changes that might have been made in the gradation list, as a result of the decisions on the representations

submitted by the Government servants concerned. A question was raised as to how seniority and pay in the promotion post should be fixed in the case of a Government Servant who in the light of the finalisation of gradation list is promoted later than the date on which he was due for promotion. It is on such question that the Government was pleased to direct:

"that seniority and initial pay on promotion according to the final gradation list should be fixed as if the Government servant had been promoted on the date on which he would have been promoted had the gradation list been finalised on the 1st November 1956. The date on which he would have been promoted should be admitted on the basis of a certificate given by the appointing authority specifying the date. No arrears of pay should, however, be paid for the period prior to the date of actual promotion."

##. The contents of the Circular considered by the Supreme Court in the case of State of Maharashtra (supra) make it clear that such Circular with directions mentioned above were issued as there was a provisional seniority list to be finalised on absorption of Government Servants in the new State. After preparation of the final gradation list, it was necessary to give notional promotions based thereon. That was a peculiar situation arising from the reorganisation of States and integration by absorption of employees from the integrative States. The Supreme Court therefore gave effect to the Circular and denied the claims of arrears of salary to the employees. Such is not the case here.

##. In the instant case, the Department has been found to have committed great injustice to the present appellant, by superseding his legitimate claim for promotion both to the posts of Mounted Police Sub Inspector and Mounted Police Inspector. The appellant was in no manner at fault. In such a situation, on the basis of departmental memorandum and principle of 'no work no pay', the appellant cannot be denied arrears of difference of salary between the deemed date of his promotion and the date of his actual promotion. We rely on the decision of Supreme Court in Vasant Rao Roman v. Union of India Through The Central Railway, Bombay and Ors. 1993 Supp (2) SCC 324 where reliance by the Department on a Circular applicable to a suspended employee has not been accepted to allow the claim of difference of salary of the employee. (See observations below)

"In our view, the Tribunal was wrong in applying the aforesaid memorandum in the case of the appellant before us. Admittedly, neither the appellant had been put under suspension nor any disciplinary proceedings were pending against him. On the contrary, he had been made to suffer on account of administrative reasons for which the appellant was not responsible. There was shortage of literate Shunters at Gwalior during 1960. The appellant being literate was deputed for table work and therefore for administrative reasons he could not complete requisite number of firing kilometers. Thus, with no fault on his part his juniors had been promoted as Shunters and Drivers and his claim was ignored on account of having not completed the requisite number of firing kilometers. The Tribunal itself has allowed the claim of the appellant regarding seniority over his juniors, considering force in the contention of the appellant. Thus, in the facts and circumstances of this case, we find no justification whatsoever for not allowing the arrears of emoluments to the appellant of the post of Shunter 'B' from June 12, 1961 and that of the post of Driver 'C' from December 17, 1965."

##. The principle of 'no work no pay' is not of universal application to all cases where notional promotion has been granted to an employee. The Court can depart from the normal Rule of 'no work no pay' where the employee has been found to have been deliberately or contumaciously denied promotion in due time for the fault solely on the part of the Departmental authorities and no fault or delay on his part. See the following observations of Supreme Court in paragraphs 24 and 25 in Union of India and others v. K.V. Jankiraman and others (1991) 4 SCC 109:-

"24. It was further contended on their behalf that the normal rule is 'no work no pay'. Hence, a person cannot be allowed to draw the benefits of a post the duties of which he has not discharged. To allow him to do so is against the elementary rule that a person is to be paid only for the work he has done and not for the work he has not done. As against this, it was pointed out on behalf of the concerned employees, that on many occasions even frivolous proceedings are instituted at the instance of interested persons,

sometimes with a specific object of denying the promotion due, and the employee concerned is made to suffer both mental agony and privations which are multiplied when he is also placed under suspension. When, therefore, at the end of such sufferings, he comes out with a clean bill, he has to be resorted to all the benefits from which he was kept away unjustly.

25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of 'no work no pay' is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R.17(1) will also be inapplicable to such cases."

##. In our considered opinion, this is a fit case in which the appellant should be held entitled to arrears of difference of salary on the basis of grant of retrospective promotion to him on the post of Mounted Police Inspector.

##. On behalf of the respondent authorities of the Department, ground of delay has also been urged to resist the claim of arrears of difference of salary of the appellant. On the question of delay, we find some substance in the stand taken on behalf of the Department, that within a reasonable period after issuance of order dated 30-9-1985 (Annexure A to the petition granting him actual promotion from the date of his passing Departmental Examination on 6-5-1981 and notional promotion from 3-1-1971) the appellant ought to have approached with his grievance to this Court. Against communication dated 30-9-1985, the present Special Civil Application has been filed in April, 1987. The appellant therefore can be denied difference of salary between 3-1-1971 and 6-5-1981 on the post of Mounted Police Sub Inspector on the ground delay alone.

##. In view of the legal position discussed above, there is absolutely no justification to deny the appellant difference of pay and arrears of salary on grant of notional promotion to him on the post of Mounted Police Inspector from 23-4-1983 (i.e. the deemed date) to the date of his actual retirement on 30-4-1987. The appellant is legitimately entitled to receive arrears of

salary for the aforesaid period on grant of promotion to him on the post of Mounted Police Inspector. He is also entitled to consequential benefits of pay fixation and on that basis grant of terminal benefits to him such as pension, gratuity and others.

##. In the result, this appeal succeeds by directing that the difference of salary payable to the appellant on the basis of his promotion to the post of Mounted Police Inspector between 23.4.1983 to the date of his retirement dated 30-4-1987 be worked out and be paid to him within a reasonable period of four months from the date of communication of this order to the respondents. It is further directed that on grant of promotion to him to the post of Mounted Police Inspector from 23-4-1983, his pay be accordingly fixed and he be paid all other consequential terminal benefits such as pension, gratuity and others.

Under the circumstances, the appellant would also be entitled to the costs in this Letters Patent Appeal assessed to Rs. 3000/- from the respondents.

The Civil Application shall also accordingly stands disposed of.

(D.M DHARMADHIKARI, C.J.)

(J.M. PANCHAL, J)

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